

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

VECENTIE SONTIAGO MORALES, JR.,)	
)	
Petitioner,)	
)	
vs.)	Case Number CIV-09-1275-C
)	
JUSTIN JONES, Director,)	
)	
Respondent.)	

ORDER

Petitioner filed the present action pursuant to 28 U.S.C. § 2254. Consistent with the provisions of 28 U.S.C. § 636, this matter was referred to Magistrate Judge Gary Purcell. Judge Purcell determined that Petitioner's claim was a second 28 U.S.C. § 2254 motion and for that reason should be either transferred to the Tenth Circuit for authorization or dismissed as it lacked merit. Ultimately, Judge Purcell recommended dismissal. Petitioner objects to Judge Purcell's Report and Recommendation ("R&R"), arguing his claims were distinct from those originally raised and that his claims had merit.

The facts and relevant law are set out in full in the accurate and well-reasoned opinion of the Magistrate Judge and there is no need to repeat them here. Judge Purcell correctly determined that Petitioner's present motion was second or successive. Petitioner's arguments to the contrary are unavailing for the reasons set forth by Judge Purcell. Thus, the Court is faced with the decision to transfer or dismiss. In re Cline, 531 F.3d 1249, 1252 (10th Cir. 2008) ("When a second or successive § 2254 or § 2255 claim is filed in the district court

without the required authorization from this court, the district court may transfer the matter to this court if it determines it is in the interest of justice to do so under § 1631, or it may dismiss the motion or petition for lack of jurisdiction.”). As Judge Purcell noted, Petitioner’s challenge lacks any support in Oklahoma law. Under Oklahoma law, the fact that the trial judge did not specify the manner in which the sentences should run dictates that they run consecutively. See 21 Okla. Stat. § 61.1. Because Petitioner’s claim lacks any merit, the Court finds the proper course is to dismiss for lack of jurisdiction. Cline, 531 F.3d at 1252 (“Where there is no risk that a meritorious successive claim will be lost absent a § 1631 transfer, a district court does not abuse its discretion if it concludes it is not in the interest of justice to transfer the matter to this court for authorization.”).

Accordingly, the Court adopts, in its entirety, the Report and Recommendation (Dkt. No. 7) of the Magistrate Judge, and for the reasons announced therein, **DISMISSES WITHOUT PREJUDICE** this petition for habeas corpus relief. A judgment will enter accordingly.

IT IS SO ORDERED this 3rd day of May, 2010.



ROBIN J. CAUTHRON
United States District Judge